

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9346 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

DY EXECUTIVE ENGINEER

Versus

MANSUKHVAN SAMVAN

Appearance:

MR DG CHAUHAN for Petitioner

MR JT TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 18/09/98

ORAL JUDGEMENT

RULE. Mr.Trivedi waives service of Rule.

2. Heard Mr.Chauhan for the petitioner and Mr.Trivedi for the respondent. The respondent was a person who was working as a daily rated employee under the Water Supply and Sewerage Board from 29.4.1978 until 20.6.1981 on a particular project of underground drainage

scheme at Porbandar. On that scheme being completed, he was asked to join at another place where he joined for two days, but did not turn up thereafter and contended that he was terminated. He raised a reference to the Labour Court at Junagadh. The petitioner - management filed reply. It did not cross-examine the workman nor did they lead any documentary or oral evidence. In the circumstances, the learned Judge held that the workman was entitled to protection under Section 25-F of the Industrial Disputes Act, 1947 and directed reinstatement with continuity and full backwages. Being aggrieved by that award, this petition is filed.

3. Mr.Chauhan appearing for the petitioner has relied upon the judgment of the Supreme Court in the case of RATTAN SINGH v. UNION OF INDIA reported in (1997) 11 Supreme Court Cases 397 wherein a daily rated workman who had put in four years service was given an amount of Rs.25,000/- by the Supreme Court by modifying the order of the learned Judge of the Labour Court which granted reinstatement and where there was a gap of twenty years. It is also stated by Mr.Chauhan that the respondent has been reinstated in service in the meanwhile as a daily rated workman. The only grievance is with respect to the award of backwages and continuity of service. On both these aspects, Mr.Chauhan and Mr.Trivedi leave it to the court.

4. As far as continuity of service is concerned, inasmuch as the respondent had put in only three years of service earlier as a daily rated workman, it would be difficult to say that he should be granted continuity though he will be eligible for regularisation under whatever is the scheme available for the workman under the Water Supply and Sewerage Board. As far as backwages are concerned inasmuch as the wages due to the workman were less than Rs.500/- per month, backwages would come to Rs.90,000/- and odd. Mr.Trivedi submitted that half the backwages be paid. He has left it to the discretion of the court. Looking to the circumstances of the matter and also the precedent shown by Mr.Chauhan, in my view, it would be proper that the respondent be paid an amount of Rs.30,000/- which would be one-third of the backwages. The impugned award will stand modified as above. The amount due to the workman will be paid by the end of October 1998. Rule is made absolute with no order as to costs. Direct Service is permitted.

(KMG Thilake)

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